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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

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DOCKETED

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

MAR 22 2011

DOCKETED BY

IN THE MATTER OF THE APPLICATION OF THE
ARIZONA DEPARTMENT OF TRANSPORTATION
TO MODIFY FOUR EXISTING CROSSINGS OF
THE BURLINGTON NORTHERN SANTA FE
RAILWAY AT 103RD, 107TH, 111TH AVENUES
AND GREENWAY ROAD, IN MARICOPA
COUNTY, ARIZONA.

DOCKET NO. RR-02635B-10-0305

PROCEDURAL ORDER
(Schedules Hearing)

BY THE COMMISSION:

On July 22, 2010, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") an application for approval for the modification of four crossings of the Burlington Northern Santa Fe Railway ("Railroad") in Maricopa County ("County"), Arizona. The first three of the crossings are in the County and the last one is in the City of Surprise ("City") as follows: 103rd Avenue at USDOT NO. 025 399 X; 107th Avenue at USDOT NO. 025 398 R; 111th Avenue at USDOT NO. 025 397 J; and Greenway Road at USDOT NO. 025 651 J ("Application").

On August 11, 2010, by Procedural Order, the Application was scheduled for hearing on November 16, 2010, and other procedural dates established.

On September 28, 2010, the Safety Division, Railroad Safety Section ("Staff") filed a request for a Procedural Order to be issued. Staff indicated that ADOT and the Railroad were discussing changes to the Application. Because the changes would affect the scope and character of the Application, Staff indicated that the Application would have to be amended. Staff was unaware when this filing would take place and was unable to determine when it would be able to file its Staff Report. ADOT indicated further that public notice had not yet been provided pursuant to the Commission's earlier Procedural Order of August 11, 2010.

On October 1, 2011, by Procedural Order, the hearing scheduled on November 16, 2010, was

1 ordered to be vacated together with all related filing dates and for the provision of public notice. It
2 was further ordered that upon the filing of an amended Application by ADOT, a new Procedural
3 Order would be issued to establish a new hearing date, a date for public notification, and other related
4 filing dates.

5 On February 28, 2011, ADOT filed its amended Application with respect to the
6 aforementioned crossings.

7 Accordingly, a hearing should be scheduled.

8 Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern
9 the preparation and conduct of this proceeding.

10 IT IS THEREFORE ORDERED that the request of ADOT shall be considered an application
11 for the Railroad to modify four existing crossings pursuant to A.R.S. § 40-337, et seq.

12 IT IS FURTHER ORDERED that the Railroad shall be considered as the Respondent in this
13 proceeding.

14 IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **May 26,**
15 **2011, at 10:00 a.m.,** or as soon thereafter as is practical, at the Commission's offices, 1200 West
16 Washington Street, Hearing Room 1, Phoenix, Arizona.

17 IT IS FURTHER ORDERED that within five business days of receipt of this Procedural
18 Order, **THE ARIZONA DEPARTMENT OF TRANSPORTATION SHALL PROVIDE THE**
19 **RAILROAD, MARICOPA COUNTY, THE CITY OF SURPRISE AND ANY OTHER**
20 **MUNICIPALITY OR INTERESTED PARTY** that may be affected by the application with a copy
21 of the application and this Procedural Order by certified mail.

22 IT IS FURTHER ORDERED that Safety Division, Railroad Safety Section ("Staff") shall
23 prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of
24 them with Docket Control on or before 4:00 p.m. on **May 6, 2011.**

25 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
26 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on **May 16,**
27 **2011.**

28 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-

105, except that all motions to intervene must be filed on or before **May 4, 2011**.

IT IS FURTHER ORDERED that Arizona Department of Transportation shall provide public notice of the hearing in this matter, in the following form and style:

**PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE
APPLICATION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION TO
MODIFY FOUR EXISTING CROSSINGS OF THE BURLINGTON NORTHERN
SANTA FE RAILWAY AT 103RD, 107TH, 111TH AVENUES AND GREENWAY
ROAD, IN MARICOPA COUNTY, ARIZONA.
(DOCKET NO. RR-02635B-10-0305)**

On July 22, 2010, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") an Application for approval for the modification of four crossings of the Burlington Northern Santa Fe Railway ("Railroad") in Maricopa County, Arizona. The first three of the crossings are in the County and the last one is in the City of Surprise ("City") as follows: 103rd Avenue at USDOT NO. 025 399 X; 107th Avenue at USDOT NO. 025 398 R; 111th Avenue at USDOT NO. 025 397 J; and Greenway Road at USDOT NO. 025 651 J.

On February 28, 2011, ADOT filed an amended Application.

The Application is available for inspection during regular business hours at the offices of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona, and on the internet via the Commission website (www.azcc.gov) using the e-docket function.

The Commission will hold a hearing on this matter commencing on **May 26, 2011, at 10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room 1, Phoenix, Arizona. Public comments will be taken on the first day of the hearing.

The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Intervention shall be permitted to any person entitled by law to intervene and having a direct and substantial interest in the matter. Persons desiring to intervene must file a written motion to intervene with the Commission, which motion should be sent to Applicant or its counsel and to all parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of Railroad, a neighboring property owner, a crossing user, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicant or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before May 4, 2011. If representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Arizona Corporation Commission's webpage at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The

1 granting of intervention, among other things, entitles a party to present sworn evidence
2 at hearing and to cross-examine other witnesses. However, failure to intervene will
3 not preclude any customer from appearing at the hearing and making a statement on
4 such customer's own behalf.

5 If you have any questions about this application, you may contact the applicant at
6 **[insert telephone number]**. If you wish to file written comments on the application
7 or want further information on intervention, you may write the Consumer Services
8 Section of the Commission at 1200 West Washington Street, Phoenix, Arizona
9 85007 or call 602-542-4251 or 1-800-222-7000 or appear at the hearing and make
comment.

10 The Commission does not discriminate on the basis of disability in admission to its
11 public meetings. Persons with a disability may request a reasonable accommodation
12 such as a sign language interpreter, as well as request this document in an alternative
13 format, by contacting Shaylin Bernal, ADA Coordinator, voice phone number
14 602/542-3931, E-mail SABernal@azcc.gov. Requests should be made as early as
15 possible to allow time to arrange the accommodation.

16 IT IS FURTHER ORDERED that Arizona Department of Transportation shall cause the
17 above notice to be published at least once in a newspaper of general circulation in the city where the
18 crossing is located, with **publication to be completed no later than April 15, 2011.**

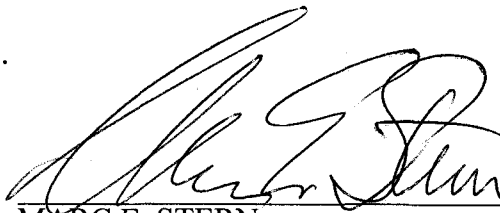
19 IT IS FURTHER ORDERED that notice shall be deemed complete upon the publication of
20 same, notwithstanding the failure of an individual or entity to read or receive the notice.

21 IT IS FURTHER ORDERED that **ARIZONA DEPARTMENT OF TRANSPORTATION**
22 **SHALL FILE CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET**
23 **CONTROL AS SOON AS PRACTICABLE** after the publication of notice ordered herein has been
24 completed.

25 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
26 of the Arizona Supreme Court and A.R.S. §40-243 with respect to practice of law and admission
27 *pro hac vice*.

28 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,
amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
ruling at hearing.

DATED this 27th day of March, 2011.


MARC E. STERN
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered
2 this 22nd day of March, 2011 to:

3 Melvin V. Thomas, Manager Public Projects
4 BURLINGTON NORTHERN SANTA FE
5 RAILWAY COMPANY
6 740 East Carnegie Drive
7 San Bernardino, CA 92408-3571

8 Marcel Benberou, Manager
9 Utility & Railroad Engineering
10 ARIZONA DEPARTMENT OF
11 TRANSPORTATION
12 205 South 17th Avenue, M/D 618E
13 Phoenix, AZ 85007

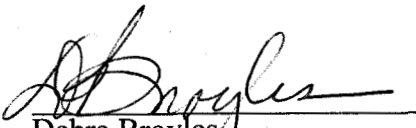
14 Kelly Roy, Utility Project Coordinator
15 MARICOPA COUNTY DEPARTMENT
16 OF TRANSPORTATION
17 2901 West Durango Street
18 Phoenix, Arizona 85009

19 Janice Alward, Chief Counsel
20 Legal Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, AZ 85007

24 Brian Lehman, Chief
25 Railroad Safety Section
26 ARIZONA CORPORATION COMMISSION
27 1200 West Washington Street
28 Phoenix, AZ 85007

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

By:


Debra Broyles
Secretary to Marc E. Stern